

Todd M. Friedman (216752)  
Adrian R. Bacon (280332)  
Law Offices of Todd M. Friedman, P.C.  
324 S. Beverly Dr., #725  
Beverly Hills, CA 90212  
Phone: 877-206-4741  
Fax: 866-633-0228  
tfriedman@attorneysforconsumers.com  
abacon@attorneysforconsumers.com  
Attorneys for Plaintiff

*Attorneys for Plaintiff, BEAU BRIONES, and all others similarly situated*

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BEAU BRIONES, individually, and  
on behalf of other members of the  
general public similarly situated,

Plaintiff,

vs.

FITNESS INTERNATIONAL, LLC;  
FITNESS & SPORTS CLUBS, LLC;  
LAF CANADA COMPANY dba  
L.A. FITNESS AND PRO  
RESULTS, and does 1-20,

Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR**

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*)
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (3) Violation of Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*)
- (4) Violation of Electronic Funds Transfer Act (15 U.S.C. §1693 *et seq.*)
- (5) Violation of Health Studio Services Contract Act (Civ. Code §1812.80 *et seq.*)
- (6) The Tort of Conversion of Personal Property
- (7) Violation of Financial Elder Abuse Act (Welf & Inst. Code §15610.30)

**Jury Trial Demanded**

1 Plaintiff BEAU BRIONES (“Plaintiff”), individually and on behalf of all  
2 other members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendants  
5 FITNESS INTERNATIONAL, LLC; FITNESS & SPORTS CLUBS, LLC; LAF  
6 CANADA COMPANY dba L.A. FITNESS AND PRO RESULTS, to stop  
7 Defendants’ practice of cheating consumers out of thousands of dollars each and  
8 to obtain redress for a nationwide class of consumers (“Class Members”) who  
9 purchased, within the applicable statute of limitations period, the products from  
10 Defendants (hereinafter collectively referred to as the “Class Products”). Plaintiff  
11 is a “person” as defined by Cal. Bus. & Prof. Code § 17201.

12 2. Defendant FITNESS INTERNATIONAL, LLC is a California  
13 limited liability company and is engaged in the business owning and operating  
14 fitness and training facilities open to the public with its headquarters and principle  
15 place of business in California. Defendant FITNESS INTERNATIONAL, LLC is  
16 a Health Studio within the meaning of California Civil Code § 1812.80 *et seq.*

17 3. Defendant FITNESS & SPORTS CLUBS, LLC is a Delaware limited  
18 liability company and is engaged in the business owning and operating fitness and  
19 training facilities open to the public with its headquarters and principle place of  
20 business in California. Defendant FITNESS & SPORTS CLUBS, LLC is a Health  
21 Studio within the meaning of California Civil Code § 1812.80 *et seq.*

22 4. Defendant LAF Canada Company is a Canadian Company and is  
23 engaged in the business owning and operating fitness and training facilities open  
24 to the public with its headquarters and principle place of business in Alberta,  
25 Canada. Defendant LAF Canada Company is a Health Studio within the meaning  
26 of California Civil Code § 1812.80 *et seq.*

27 5. Defendants pressured consumers into signing agreements for  
28

1 yearlong gym memberships by misleading consumers into believing that they were  
2 only obtaining and obligated to pay for one month membership.

3 6. Plaintiff and others similarly situated signed these agreements.

4 7. Defendants would then proceed to take large amounts of money from  
5 Plaintiff and others similarly situated which these consumers did not authorize.

6 8. Defendants misrepresented and falsely advertised to Plaintiff and  
7 others similarly situated the content of the agreements that Defendants pressured  
8 Plaintiff and others similarly situated to sign.

9 9. Defendants' misrepresentations to Plaintiff and others similarly  
10 situated caused them to enter into agreements, which Plaintiff and others similarly  
11 situated would not have entered absent these misrepresentations by Defendants  
12 and its employees. In so doing, Defendants have violated California consumer  
13 protection statutes and stole hundreds of thousands, if not millions, of dollars.

#### 14 **JURISDICTION AND VENUE**

15 10. This class action is brought pursuant to Federal Rule of Civil  
16 Procedure 23. All claims in this matter arise exclusively under California law.

17 11. This matter is properly venued in the United States District Court for  
18 the Central District of California, because a substantial portion of the events giving  
19 rise to Plaintiff's claims took place in this district.

20 12. There is original federal subject matter jurisdiction over this matter  
21 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.  
22 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the  
23 original jurisdiction of federal courts in any class action in which at least 100  
24 members are in the proposed plaintiff class, any member of the plaintiff class is a  
25 citizen of a State different from the State of citizenship of any Defendants, and the  
26 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and  
27 costs.

1           13. In the case at bar, there are at least 100 members in the proposed Class  
2 and Sub-classes, the total claims of the proposed Class members are in excess of  
3 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff seeks  
4 to represent a nationwide class of consumers, establishing minimum diversity.

5                                   **THE PARTIES**

6           14. Plaintiff BEAU BRIONES is a citizen and resident of the State of  
7 California, County of Los Angeles.

8           15. Plaintiff alleges, on information and belief, that Defendants'  
9 marketing campaigns, as pertains to this matter, were created by Defendants in  
10 California, and were disseminated from California, nationwide.

11           16. Plaintiff is informed and believes, and thereon alleges, that at all time  
12 relevant, Defendants' sales of memberships are governed by the controlling law  
13 in the state in which they do business and from which the sales or products and  
14 products, and the allegedly unlawful acts originated, which is California.

15           17. Plaintiff is informed and believes, and thereon alleges, that each and  
16 all of the acts and omissions alleged herein were performed by, or is attributable  
17 to, Defendants and/or its employees, agents, and/or third parties acting on its  
18 behalf, each acting as the agent for the other, with legal authority to act on the  
19 other's behalf. The acts of any and all of Defendants' employees, agents, and/or  
20 third parties acting on its behalf, were in accordance with, and represent, the  
21 official policy of Defendants.

22           18. Plaintiff is informed and believes, and thereon alleges, that said  
23 Defendants is in some manner intentionally, negligently, or otherwise responsible  
24 for the acts, omissions, occurrences, and transactions of each and all its employees,  
25 agents, and/or third parties acting on its behalf, in proximately causing the  
26 damages herein alleged.

27           19. At all relevant times, Defendants ratified each and every act or  
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1 omission complained of herein. At all relevant times, Defendants, aided and  
2 abetted the acts and omissions as alleged herein.

### 3 **FACTUAL ALLEGATIONS**

4 20. Plaintiff had a one year membership (the “Membership”) in  
5 Defendants’ health and exercise facility located at [REDACTED]. The  
6 membership expired in November 2014, at which time Plaintiff notified  
7 Defendants that he did not wish to renew or continue his membership.

8 21. Defendants’ Sales Representative Villasenor (“Villasenor”), using  
9 high pressure sales techniques on the Plaintiff, persuaded Plaintiff to “take one  
10 extra month” (the “extra-month” membership) at the same monthly price of  
11 \$140.00 which he had paid under his prior, expired membership.

12 22. The Sales Representative then presented Plaintiff with a hand-held  
13 electronic device, and instructed Plaintiff to sign on the signature line which  
14 appeared on the screen. The screen showed only the signature line and was  
15 otherwise blank. Plaintiff was given a stylus which he used to sign precisely on  
16 the signature line, never rising above it, in a completely level, horizontal manner.

17 23. Prior to affixing his signature to the blank screen, Plaintiff was not  
18 presented with a written document stating any of the terms of his continued  
19 membership, which had been advertised to Plaintiff as “one extra month”.

20 24. Plaintiff did not then, nor ever, authorize Defendant to make an  
21 electronic withdrawal from his bank account in payment of the cost of the extra  
22 month membership. Further, Defendant never signed a written authorization for  
23 Defendants to make any electronic withdrawal from his bank account

24 25. The next day Plaintiff gave Villasenor the \$140.00 payment in cash,  
25 consisting of one \$100 bill and two \$20 bills.

26 26. Notwithstanding payment of the \$140.00 agreed upon cost of the  
27 extra month membership, from November 2014 through March 2015, Defendants  
28

1 electronically debited Plaintiff's bank account \$110.00 every other week.

2 27. After approximately three weeks had expired of his extra-month  
3 membership, Plaintiff noticed that Defendants had electronically debited his bank  
4 account for \$110.00, over and above the \$140.00 Plaintiff had paid in cash to  
5 Villasenor.

6 28. Plaintiff immediately contacted Defendants, disputed the automatic  
7 withdrawal and asked Defendants to reverse the withdrawal.

8 29. Defendants responded that Plaintiff had signed a 52-week written  
9 agreement (the "Agreement") for a total amount of \$2860.00, which authorized  
10 the electronic withdrawal at the rate of \$110.00 every two weeks. Defendants  
11 further told that he could only cancel the contract if he became disabled. Defendant  
12 then provided Plaintiff, for the first time, with a copy of the Agreement. A true  
13 and correct copy of the Agreement is attached hereto as Exhibit A and incorporated  
14 by reference.

15 30. In fact, Plaintiff had never seen this Agreement before, and had never  
16 signed it.

17 31. Plaintiff never provided Defendants with any written or oral  
18 authorization to deduct money electronically from his bank account

19 32. Plaintiff is informed and believes and on that basis alleges that  
20 Defendants transferred Plaintiff's signature on the blank hand-held device and  
21 affixed it to the multipage Agreement without Plaintiff's knowledge or consent.

22 33. After the expiration of the extra month membership period, Plaintiff  
23 stopped using and never again used Defendants' facilities.

24 34. Defendants continued for at least 4-5 months to make bi-weekly  
25 electronic withdrawals of \$110.00 from Plaintiff's bank account, without  
26 Plaintiff's authorization. Such unauthorized debits from Plaintiff's bank account  
27 by Defendant continued until at March 3, 2015.

28

1           35. Over this period of time, Plaintiff continued to dispute the  
2 unpermitted electronic withdrawals and to seek reversals of the sums taken, but  
3 without success

4           36. Defendants never provided Plaintiff with a written or electronic  
5 document authorizing any of the recurring electronic withdrawals, and Plaintiff  
6 never signed any such authorization.

7           37. Plaintiff alleges such activity to be in violation of the Electronic  
8 Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”), and its surrounding  
9 regulations, including, but not limited to, 12 C.F.R. §§1005.7, 1005.8, and 1005.9.\

10           38. At all relevant times, Plaintiff’s membership to Defendants’ physical  
11 fitness and exercise facility was for the purposes of instruction, training, assistance  
12 in physical culture, body building, exercising and general physical health and well-  
13 being.

14           39. Plaintiff was never provided a written agreement for services prior to  
15 affixing his signature to the blank electronic screen.

16           40. Plaintiff was not provided with a written agreement at the time he  
17 signed the blank electronic screen.

18           41. Plaintiff was not provided with a description of the services, facilities,  
19 and hours of access to which he would be entitled prior to the time he signed the  
20 blank electronic screen.

21           42. Plaintiff was never informed in writing of the length and cost of the  
22 term of health care services prior to signing the blank electronic screen.

23           43. Plaintiff was never informed of his right to cancel the agreement prior  
24 to signing the blank electronic screen.

25           44. Plaintiff was never provided in writing with any notice of any terms  
26 of the agreement prior to signing the blank electronic screen.

27           45. At all times relevant to this complaint, Plaintiff was over the age of  
28



1 65 and an elder adult.

2 46. At all times relevant to this complaint, Defendants knew or should  
3 have known that Plaintiff was over the age of 65 and an elder adult.

4 47. By their conduct as set forth above, Defendants intentionally  
5 appropriated, obtained, retained and deprived Plaintiff of his personal property of  
6 Plaintiff with the intent to defraud Plaintiff.

7 48. At all relevant times, as set forth above, Defendants wrongfully took,  
8 appropriated, and obtained Plaintiff's personal property rights. ,

9 49. At all relevant times, Defendants knew or should have known that  
10 their conduct set forth above was likely to be harmful to Plaintiff.

11 50. At all relevant times, Defendants have been guilty of recklessness,  
12 oppression, fraud, and malice in the commission of the financial elder abuse of  
13 Plaintiff.

14 51. When, in November 2014, Plaintiff told Defendants he did not wish  
15 to continue his expiring one year membership, Defendants falsely advertised to  
16 Plaintiff that he could sign up for "an extra-month" at his previous rate of \$140.00.  
17 In fact, such a membership was not available to Plaintiff.

18 52. Defendants falsely represented to Plaintiff that he would have no  
19 obligation to Defendants following the expiration of the extra month membership.  
20 Defendant further falsely represented that Plaintiff would be required to pay only  
21 \$140.00 for the extra month membership.

22 53. When Defendants advertised the availability of the extra month  
23 membership, Defendants had no intent so sell Plaintiff such a membership, but  
24 always intended to sell Plaintiff a 52 week membership at a higher price than was  
25 quoted to Plaintiff.

26 54. At the time of the agreement, Defendants and its agents made various  
27 abiding representations to Plaintiff, including but not limited to promises that  
28



1 Plaintiff was only signing up for one month membership and was only obligated  
2 to pay for that one month.

3 55. For this reason, Plaintiff was induced to and eventually decided upon  
4 signing an agreement with Defendants.

5 56. However, despite the representations of Defendants, the agreement  
6 was for one year membership.

7 57. Upon learning this, Plaintiff felt ripped off and cheated by  
8 Defendants.

9 58. Such sales tactics rely on falsities and have a tendency to mislead and  
10 deceive a reasonable consumer.

11 59. Plaintiff is informed, believes, and thereupon alleges that such  
12 representations were part of a common scheme to mislead consumers and  
13 incentivize them to purchase Defendants' memberships.

14 60. In purchasing these memberships, Plaintiff relied upon Defendants'  
15 representations.

16 61. Plaintiff would not have purchased the product if he knew that the  
17 above-referenced statements made by Defendants were false.

18 62. Had Defendants properly marketed, advertised, and represented the  
19 true nature of these agreements Plaintiff would not have signed the agreement.

20 63. Defendants benefited on the loss to Plaintiff and provided nothing of  
21 benefit to Plaintiff in exchange.

22 64. At all relevant times, the conduct of Defendants as set forth herein  
23 has been willfully misleading, fraudulent, false and oppressive.

24 **CLASS ACTION ALLEGATIONS**

25 65. Plaintiff brings this action, on behalf of himself and all others  
26 similarly situated, and thus, seeks class certification under Federal Rule of Civil  
27 Procedure 23.

28

1           66. The class Plaintiff seeks to represent (the “Class”) is defined as  
2 follows:

3           All persons in the United States whose bank accounts were debited on a  
4 reoccurring basis by Defendants without Defendants obtaining a written  
5 authorization signed or similarly authenticated for preauthorized  
6 electronic fund transfers within the one year prior to the filing of this  
7 Complaint.

6           67. As used herein, the term “Class Members” shall mean and refer to the  
7 members of the Class described above.

8           68. Plaintiff also seeks to represent the subclass (the “California Class”)  
9 as defined as follows:

10           All persons in California whose bank accounts were debited on a  
11 reoccurring basis by Defendants without Defendants obtaining a written  
12 authorization signed or similarly authenticated for preauthorized  
13 electronic fund transfers within the one year prior to the filing of this  
14 Complaint.

13           69. As used herein, the term “California Class Members” shall mean and  
14 refer to the members of the California Class described above.

15           70. Plaintiff also seeks to represent the subclass (the “Elder Class”) as  
16 defined as follows:

17           All persons 65 years of age or older in California whose bank accounts  
18 were debited on a reoccurring basis by Defendants without Defendants  
19 obtaining a written authorization signed or similarly authenticated for  
20 preauthorized electronic fund transfers within the one year prior to the  
21 filing of this Complaint.

20           71. As used herein, the term “Elder Class Members” shall mean and refer  
21 to the members of the Elder Class described above.

22           72. Excluded from the Class, the California Class, and the Elder Class  
23 (collectively, the “Classes”) are Defendants, its affiliates, employees, agents, and  
24 attorneys, and the Court.

25           73. Plaintiff reserves the right to amend the Classes, and to add additional  
26 subclasses, if discovery and further investigation reveals such action is warranted.

27           74. Upon information and belief, the proposed Classes are each  
28 composed of thousands of persons. The members of the Classes are so numerous

1 that joinder of all members would be unfeasible and impractical.

2 75. No violations alleged in this complaint are contingent on any  
3 individualized interaction of any kind between members of the Classes and  
4 Defendants.

5 76. Rather, there are common questions of law and fact as to the members  
6 of the Classes that predominate over questions affecting only individual members,  
7 including but not limited to:

- 8 (a) Whether Defendants engaged in unlawful, unfair, or deceptive  
9 business practices in selling gym memberships to Plaintiff and  
10 other members of the Classes;
- 11 (b) Whether Defendants made misrepresentations with respect to  
12 the gym memberships sold to consumers;
- 13 (c) Whether Defendants profited from the sale of the gym  
14 memberships;
- 15 (d) Whether Defendants violated California Bus. & Prof. Code §  
16 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*,  
17 and California Civ. Code § 1750, *et seq.*;
- 18 (e) Whether the members of the Classes entered into agreements  
19 with Defendants to have automatic, or recurring, electronic  
20 payments drawn from their personal accounts to be paid to  
21 Defendants;
- 22 (f) Whether Defendants requested, or provided, members of the  
23 Classes with written agreements memorializing the automatic  
24 or recurring electronic payments;
- 25 (g) Whether the members of the Classes provided either a written  
26 or electronic signature authorizing the automatic or recurring  
27 electronic payments;
- 28

- (h) Whether the members of the Classes were provided with, or executed, written agreements memorializing the automatic or recurring electronic payments;
- (i) Whether Defendants took unauthorized payments from accounts of members of the Classes;
- (j) Whether Plaintiff and members of the Classes are entitled to equitable and/or injunctive relief;
- (k) Whether Defendants' unlawful, unfair, and/or deceptive practices harmed Plaintiff and members of the Classes; and
- (l) The method of calculation and extent of damages for Plaintiff and members of the Classes.

77. Plaintiff is a member of the classes he seeks to represent.

78. The claims of Plaintiff are not only typical of all members of the Classes, they are identical.

79. All claims of Plaintiff and the Classes are based on the exact same legal theories.

80. Plaintiff has no interest antagonistic to, or in conflict with, the Classes.

81. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each member of the Classes, because Plaintiff signed an agreement with Defendants during the Class Period. Defendants' unlawful, unfair and/or fraudulent actions concerns the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff's claims are typical of all members of the Classes as demonstrated herein.

82. Plaintiff will thoroughly and adequately protect the interests of the Classes, having retained qualified and competent legal counsel to represent himself and the Classes.

1           83. Common questions will predominate, and there will be no unusual  
2 manageability issues.

3                                   **FIRST CAUSE OF ACTION**

4                           **Violation of the California False Advertising Act**

5                           **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

6                                   **-- The Class --**

7           84. Plaintiff incorporates by reference each allegation set forth above.

8           85. Pursuant to California Business and Professions Code section 17500,  
9 *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and  
10 which is known, or which by the exercise of reasonable care should be known, to  
11 be untrue or misleading...or...to so make or disseminate or cause to be so made or  
12 disseminated any such statement as part of a plan or scheme with the intent not to  
13 sell that personal property or those products, professional or otherwise, so  
14 advertised at the price stated therein, or as so advertised.”

15           86. California Business and Professions Code section 17500, *et seq.*’s  
16 prohibition against false advertising extends to the use of false or misleading  
17 written or oral statements.

18           87. Defendants misled consumers by making misrepresentations and  
19 untrue statements about its gym membership agreements, namely, Defendants sold  
20 the agreements advertised to be one month long and charge for this amount fully  
21 knowing and intended to lock consumers into one year agreements and charge  
22 them a much higher amount, and made false representations to Plaintiff and other  
23 putative members of the Classes in order to solicit these transactions.

24           88. Defendants knew that their representations and omissions were untrue  
25 and misleading, and deliberately made the aforementioned representations and  
26 omissions in order to deceive reasonable consumers like Plaintiff and other  
27 members of the Classes.

28

1           89. As a direct and proximate result of Defendants' misleading and false  
2 advertising, Plaintiff and the other members of the Classes have suffered injury in  
3 fact and have lost money or property. Plaintiff reasonably relied upon Defendants'  
4 representations regarding the membership agreements. In reasonable reliance on  
5 Defendants' false advertisements, Plaintiff and other members of the Classes  
6 signed agreements. As a result, Plaintiff and other members of the Classes ended  
7 up signing agreements that they believed to be for one month when they were in  
8 fact for one year and therefore Plaintiff and other members of the Classes have  
9 suffered injury in fact.

10           90. Plaintiff alleges that these false and misleading written  
11 representations made by Defendants constitute a "scheme with the intent not to  
12 sell that personal property or those products, professional or otherwise, so  
13 advertised at the price stated therein, or as so advertised."

14           91. Defendants advertised to Plaintiff and other putative members of the  
15 Classes, through written and oral representations and omissions made by  
16 Defendants and its employees, that the memberships would be as claimed.

17           92. Defendants knew that the memberships were not in fact what they  
18 claimed them to be.

19           93. Thus, Defendants knowingly sold memberships to Plaintiff and other  
20 putative members of the Classes that were different than they claimed to be.

21           94. The misleading and false advertising described herein presents a  
22 continuing threat to Plaintiff and the members of the Classes in that Defendants  
23 persist and continue to engage in these practices, and will not cease doing so unless  
24 and until forced to do so by this Court. Defendants' conduct will continue to cause  
25 irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled  
26 to preliminary and permanent injunctive relief ordering Defendants to cease their  
27 false advertising, as well as disgorgement and restitution to Plaintiff and all  
28

members of the Classes of Defendants' revenues associated with their false advertising, or such portion of those revenues as the Court may find equitable.

## SECOND CAUSE OF ACTION

### Violation of Unfair Business Practices Act

(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

#### -- The Class --

95. Plaintiff incorporates by reference each allegation set forth above.

96. Actions for relief under the unfair competition law may be based on any business act or practice that is within the broad definition of the UCL. Such violations of the UCL occur as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required to provide evidence of a causal connection between a Defendants' business practices and the alleged harm--that is, evidence that the Defendants' conduct caused or was likely to cause substantial injury. It is insufficient for a plaintiff to show merely that the Defendants' conduct created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of unfair competition covers any single act of misconduct, as well as ongoing misconduct.

#### UNFAIR

97. California Business & Professions Code § 17200 prohibits any "unfair ... business act or practice." Defendants' acts, omissions, misrepresentations, and practices as alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein. Plaintiff reserves the right to allege further conduct



1 which constitutes other unfair business acts or practices. Such conduct is ongoing  
2 and continues to this date.

3 98. In order to satisfy the “unfair” prong of the UCL, a consumer must  
4 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing  
5 benefits to consumers or competition; and, (3) is not one that consumers  
6 themselves could reasonably have avoided.

7 99. Here, Defendants’ conduct has caused and continues to cause  
8 substantial injury to Plaintiff and members of the Class. Plaintiff and members of  
9 the Class have suffered injury in fact due to Defendants’ decision to sell them gym  
10 memberships that were different than what they were claimed to be. Thus,  
11 Defendants’ conduct has caused substantial injury to Plaintiff and the members of  
12 the Classes.

13 100. Moreover, Defendants’ conduct as alleged herein solely benefits  
14 Defendants while providing no benefit of any kind to any consumer. Such  
15 deception utilized by Defendants convinced Plaintiff and members of the Class  
16 that the memberships being provided were for only one month in order to induce  
17 them to spend money on said memberships. In fact, knowing that the memberships  
18 being provided to Plaintiff and other putative members of the Classes were  
19 different than advertised, Defendant unfairly profited from their sale. Thus, the  
20 injury suffered by Plaintiff and the members of the Classes is not outweighed by  
21 any countervailing benefits to consumers.

22 101. Finally, the injury suffered by Plaintiff and members of the Sub-Class  
23 is not an injury that these consumers could reasonably have avoided. After  
24 Defendants, falsely represented the agreements, these consumers suffered injury  
25 in fact due to Defendants’ sale of the memberships to them. Defendants failed to  
26 take reasonable steps to inform Plaintiff and members of the Classes that the  
27 memberships were in fact for a year, including failing to provide an opportunity  
28

1 to Plaintiff and members of the Class to read and review the accurate agreement  
2 terms prior to the signing of the agreement. As such, Defendants took advantage  
3 of Defendants' position of perceived power in order to deceive Plaintiff and the  
4 members of the Classes to purchase its products. Therefore, the injury suffered by  
5 Plaintiff and members of the Classes is not an injury which these consumers could  
6 reasonably have avoided.

7 102. Thus, Defendants' conduct has violated the "unfair" prong of  
8 California Business & Professions Code § 17200.

### 9 **FRAUDULENT**

10 103. California Business & Professions Code § 17200 prohibits any  
11 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"  
12 prong of the UCL, a consumer must allege that the fraudulent business practice  
13 was likely to deceive members of the public.

14 104. The test for "fraud" as contemplated by California Business and  
15 Professions Code § 17200 is whether the public is likely to be deceived. Unlike  
16 common law fraud, a § 17200 violation can be established even if no one was  
17 actually deceived, relied upon the fraudulent practice, or sustained any damage.

18 105. Here, not only were Plaintiff and the Class members likely to be  
19 deceived, but these consumers were actually deceived by Defendants. Such  
20 deception is evidenced by the fact that Plaintiff agreed to purchase Class Products  
21 under the basic assumption that they provided the products, even though the  
22 products contained no such feature. Plaintiff's reliance upon Defendants'  
23 deceptive statements is reasonable due to the unequal bargaining powers of  
24 Defendants and Plaintiff. For the same reason, it is likely that Defendants'  
25 fraudulent business practice would deceive other members of the public.

26 106. As explained above, Defendants deceived Plaintiff and other  
27 members of the Class by misrepresenting the agreements.  
28



**THIRD CAUSE OF ACTION**  
**Violation of Consumer Legal Remedies Act**  
**(Cal. Civ. Code § 1750 *et seq.*)**

**-- The Class --**

113. Plaintiff incorporates by reference each allegation set forth above herein.

114. Defendants' actions as detailed above constitute a violation of the Consumer Legal Remedies Act, Cal. Civ. Code §1770 to the extent that Defendants violated the following provisions of the CLRA:

- a. Representing that goods or products have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or he does not have. Cal. Civ. Code § 1770(5);
- b. Representing that goods or products are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. Cal. Civ. Code § 1770(7);
- c. Advertising goods or products with intent not to sell them as advertised; *Cal. Civ. Code* §1770(9);
- d. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; *Cal. Civ. Code* §1770(14); and
- e. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not; *Cal. Civ. Code* §1770(16);

115. On or about June 25, 2015, through their Counsel of record, using certified mail with a return receipt requested, Plaintiffs served Defendants with notice of its violations of the CLRA, and asked that Defendants correct, repair, replace or otherwise rectify the goods and products alleged to be in violation of the CLRA; this correspondence advised Defendants that they must take such

1 action within thirty (30) calendar days, and pointed Defendants to the provisions  
 2 of the CLRA that Plaintiffs believe to have been violated by Defendants.  
 3 Defendants have not replied to this correspondence, and have thereby refused to  
 4 timely correct, repair, replace or otherwise rectify the issues raised therein.

#### 5 **FOURTH CAUSE OF ACTION**

##### 6 **Violation of the Electronic Funds Transfer Act**

##### 7 **(15 U.S.C. 1693 *et seq.*)**

8 116. Plaintiff incorporates by reference each allegation set forth above.

9 117. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a  
 10 “preauthorized electronic fund transfer from a consumer’s account may be  
 11 authorized by the consumer only in writing, and a copy of such authorization shall  
 12 be provided to the consumer when made.”

13 118. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the  
 14 term “preauthorized electronic fund transfer” means “an electronic fund transfer  
 15 authorized in advance to recur at substantially regular intervals.”

16 119. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides  
 17 that “[p]reauthorized electronic fund transfers from a consumer’s account may be  
 18 authorized only by a writing signed or similarly authenticated by the consumer.  
 19 The person that obtains the authorization shall provide a copy to the consumer.”

20 120. Section 205.10(b) of the Federal Reserve Board's Official Staff  
 21 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he  
 22 authorization process should evidence the consumer’s identity and assent to the  
 23 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further  
 24 provides that “[a]n authorization is valid if it is readily identifiable as such and the  
 25 terms of the preauthorized transfer are clear and readily understandable.” *Id.* at  
 26 ¶10(b), comment 6.

27 121. In multiple instances, Defendants have debited the bank accounts of  
 28

1 Plaintiff and members of the Classes on a recurring basis without obtaining a  
 2 written authorization signed or similarly authenticated for preauthorized electronic  
 3 fund transfers from the accounts of Plaintiff members of the Classes, thereby  
 4 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b)  
 5 of Regulation E, 12 C.F.R. § 205.10(b).

6 122. In multiple instances, Defendants have debited bank accounts of  
 7 Plaintiff and members of the Class on a recurring basis without providing a copy  
 8 of a written authorization signed or similarly authenticated by Plaintiff or the  
 9 putative Class members for preauthorized electronic fund transfers, thereby  
 10 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b)  
 11 of Regulation E, 12 C.F.R. § 205.10(b).

## 12 **FIFTH CAUSE OF ACTION**

### 13 **Violation of Health Studio Services Contract Act**

#### 14 **(Cal. Civ. Code § 1812.81)**

#### 15 **-- The Class --**

16 123. Plaintiff incorporates by reference each allegation set forth above.

17 124. Defendants' facility is a health studio within the meaning of  
 18 California Civil Code § 1812.81.

19 125. California Civil Code § 1812.82 requires every contract for health  
 20 studio services shall be in writing and also that a written copy shall be given to the  
 21 consumer at the time he signs the contract.

22 126. Cal. Civ. Code § 1812.83 requires that a contract for health studio  
 23 services shall include a statement printed in a size at least 14-point type that  
 24 discloses the length of the term of the contract. This statement shall be placed  
 25 above the space reserved for the signature of the buyer.

26 127. Cal Civ Code § 1812.85 requires that the contract shall provide a  
 27 description of the services, facilities, and hours of access to which the consumer  
 28

1 is entitled.

2 128. Cal. Civ Code § 1812.85 (b)(1) requires that every contract for health  
3 studio services shall, in addition, contain on its face, a conspicuous statement in a  
4 size equal to at least 10-point boldface type, as follows: “You, the buyer, may  
5 cancel this agreement at any time prior to midnight of the fifth business day of the  
6 health studio after the date of this agreement.

7 129. Defendants failed to enter into a written contract with Plaintiff for  
8 Plaintiffs’ post-November 2014 membership, and failed to provide Plaintiff with  
9 a written contract at the time he signed the blank electronic screen.

10 **SIXTH CAUSE OF ACTION**

11 **Conversion**

12 **-- The Class --**

13 130. Plaintiff incorporates by reference each allegation set forth above.

14 131. At all relevant times Plaintiff owned the funds in bank account  
15 number [REDACTED] at XYZ Bank located at  
16 [REDACTED].

17 132. During the period from November 2014 through March 2015,  
18 Defendants electronically withdrew the sum of \$110.00 every other week from  
19 Plaintiff’s Account without permission or authorization from Plaintiff.

20 133. Without Plaintiff’s consent, Defendants intentionally deprived  
21 Plaintiff from the funds in his account.

22 134. At all times relevant hereto, Defendants acted with malice,  
23 recklessness and total and deliberate disregard for the contractual and personal  
24 rights of Plaintiff.

25 135. As a proximate result of Defendants’ actions, Plaintiff was deprived  
26 of her vehicle, incurred expense for alternate transportation, and has suffered  
27 extreme embarrassment, shame, anxiety, and mental distress.

28



**SEVENTH CAUSE OF ACTION**  
**Violation of Financial Elder Abuse Act**  
**(Welf. & Inst. Code § 15610.30)**

**-- The Elder Class --**

136. Plaintiff incorporates by reference each allegation set forth above.

137. Cal. Welf. & Inst. Code § 15610.27 defines an “Elder” as any person residing in this state, 65 years of age or older.

138. Cal. Welfare & Institutions Code § 15610.30 (a) (1) states that financial abuse of an elder occurs when a person or entity takes, secretes, appropriates, obtains, or retains personal property of an elder for a wrongful use or with intent to defraud, or both.

139. Financial Elder Abuse also occurs under Cal. Welfare & Institutions Code § 15610.30 (a) (2) when a person or entity assists in taking, secreting, appropriating, obtaining, or retaining personal property of an elder for a wrongful use or with intent to defraud, or both.

140. Defendants committed and assisted one another in committing financial elder abuse when they fraudulently affixed an image of Plaintiffs’ signature to a contract which was not presented to Plaintiff and which Plaintiff did not read; and, relied on this fraudulent agreement to withdraw Plaintiff’s personal funds from Plaintiff bank account without Plaintiff’s agreement or authorization

141. Cal. Welfare & Institutions Code § 15610.30 (b) establishes that a person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder.

142. Defendants committed financial elder abuse because they knew that

1 their wrongful conduct was likely to be harmful to Plaintiff.

2 143. Cal. Welfare & Institutions Code § 15610.30 (c) establishes that a  
3 person or entity takes, secretes, appropriates, obtains, or retains personal property  
4 when an elder is deprived of any property right, including by means of an  
5 agreement.

6 144. Defendants committed financial elder abuse because they deprived  
7 Plaintiff of the right to use his personal funds which were wrongfully withdrawn  
8 from Plaintiff's account.

9 **MISCELLANEOUS**

10 145. Plaintiff and members of the Classes allege that they have fully  
11 complied with all contractual and other legal obligations and fully complied with  
12 all conditions precedent to bringing this action or all such obligations or conditions  
13 are excused.

14 **REQUEST FOR JURY TRIAL**

15 146. Plaintiff requests a trial by jury as to all claims so triable.

16 **PRAYER FOR RELIEF**

17 147. Plaintiff, on behalf of himself and the Classes, requests the following  
18 relief:

- 19 (a) An order certifying the Classes and appointing Plaintiff as  
20 Representative of the Classes;
- 21 (b) An order certifying the undersigned counsel as Class Counsel;
- 22 (c) An order requiring Defendants, at their own cost, to notify all  
23 Class Members of the unlawful and deceptive conduct herein;
- 24 (d) An order requiring Defendants to engage in corrective  
25 advertising regarding the conduct discussed above;
- 26 (e) Actual damages suffered by Plaintiff and members of the  
27 Classes as applicable or full restitution of all funds acquired  
28

1 from Plaintiff and members of the Classes from the sale of  
2 misbranded Class Products during the relevant class period;

3 (f) Punitive damages, as allowable, in an amount determined by  
4 the Court or jury;

5 (g) Any and all statutory enhanced damages;

6 (h) All reasonable and necessary attorneys' fees and costs provided  
7 by statute, common law or the Court's inherent power;

8 (i) Pre- and post-judgment interest; and

9 (j) All other relief, general or special, legal and equitable, to which  
10 Plaintiff and members of the Classes may be justly entitled as  
11 deemed by the Court.

12  
13 Dated: January 12, 2016

Respectfully submitted,

14 LAW OFFICES OF TODD M. FRIEDMAN , PC

15  
16 By: /s Todd. M. Friedman

17 TODD M. FRIEDMAN, ESQ.

18 Attorney for Plaintiff BEAU BRIONES  
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